

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

ANTENETA H.,	)	2 CA-JV 2011-0065
	)	DEPARTMENT B
	)	
Appellant,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC	)	
SECURITY and ELIJAH B.,	)	
	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S197673

Honorable Kathleen Quigley, Judge Pro Tempore

AFFIRMED

Curtis & Cunningham  
By George Haskel Curtis

Tucson  
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
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Department of Economic Security

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K E L L Y, Judge.

¶1 Anteneta H. appeals from the juvenile court's order terminating her parental rights to her son, Elijah B., born April 13, 2007. Anteneta argues on appeal that the court erred in finding her failure to appear on the second day of the termination hearing without good cause and that she therefore had waived her rights and admitted the allegations in the petition for termination. *See* Ariz. R. P. Juv. Ct. 66(D)(2). We affirm.

¶2 In March 2011, the Arizona Department of Economic Security (ADES) petitioned to terminate Anteneta's parental rights to Elijah based on abandonment. *See* A.R.S. § 8-533(B)(1). The juvenile court then scheduled an initial termination hearing. Anteneta was warned both before and again during the initial termination hearing, that if she failed to appear at subsequent hearings absent good cause, the hearing could continue in her absence, she could be deemed to have admitted the allegations in ADES's petition, and the court could then terminate her parental rights based on the record and evidence presented.

¶3 Anteneta personally appeared at the first day of the contested termination hearing on May 26, 2011. After taking testimony and admitting exhibits, the juvenile court affirmed that the second day of the hearing would be May 31 and reminded Anteneta that she "need[ed] to be present at that time or the hearing could proceed in [her] absence." At the time of the May 31 hearing, however, Anteneta did not personally appear but instead appeared telephonically. Noting Anteneta did not have permission to appear telephonically, the court directed that counsel question her regarding whether she had good cause for her failure to personally appear.

¶4 Anteneta, who resides in California, explained that she had planned to take a bus from California to Phoenix, and then another to Tucson, after finishing work the

previous day, but she had missed the bus to Phoenix by about seven minutes. She testified that she had approximately ninety minutes after her shift had ended to commute home, prepare for the trip, and then get to the bus station. She stated that it took approximately fifteen to twenty minutes to travel from work to home, and another fifteen minutes to travel to the bus station from her home. She also explained there were no other buses that could have gotten her to the hearing on time, and that, although she could have borrowed a car to drive to Tucson, she was “too scared to drive . . . eight hours straight over night by [her]self.”

¶5 The juvenile court concluded Anteneta had not demonstrated good cause for her absence “in light of the fact that she had sufficient time after she was off work yesterday to make the bus and to get to court and did not use her time wisely.” It stated the hearing would proceed as if she were not present and deemed her to have admitted the allegations in the petition. ADES declined to present further evidence and both parties participated in closing arguments. After taking the matter under advisement, the court entered a ruling terminating Anteneta’s parental rights to Elijah, finding ADES had proven abandonment by clear and convincing evidence and that termination was in Elijah’s best interests.

¶6 On appeal Anteneta argues the juvenile court “should have found good cause” and thus should have “delayed the severance trial by one trial day.” Rule 66(D)(2), Ariz. R. P. Juv. Ct., provides that,

[i]f the court finds the parent . . . failed to appear at the termination adjudication hearing without good cause shown, had notice of the hearing, was properly served pursuant to Rule 64[, Ariz. R. P. Juv. Ct.,] and had been previously admonished regarding the consequences of failure to appear,

including a warning that the hearing could go forward in the absence of the parent . . . and that failure to appear may constitute a waiver of rights, and an admission to the allegation contained in the motion or petition for termination, the court may terminate parental rights based upon the record and evidence presented if the moving party or petitioner has proven grounds upon which to terminate parental rights.

¶7 The juvenile court has broad discretion in determining what constitutes good cause for a party's failure to appear at a hearing. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 15, 158 P.3d 225, 230 (App. 2007). To show good cause, the parent must show that "mistake, inadvertence, surprise or excusable neglect exists." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, ¶ 16, 173 P.3d 463, 468 (App. 2007). "Excusable neglect" exists when the act "is such as might be the act of a reasonably prudent person in the same circumstances." *Id.*, quoting *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163, 871 P.2d 698, 710 (App. 1993).

¶8 As we understand her argument, Anteneta claims, without citation to the record, that because a previous dependency adjudication involving Elijah had been set aside and she had attended hearings telephonically "nine previous times," the juvenile court erred in finding she had not shown good cause for her failure to appear. She cites *Ulibarri* in support of her argument, but fails to explain its significance. Although *Ulibarri* discusses excusable neglect based on an attorney's failure to timely respond to a motion, nothing in that case suggests the juvenile court abused its discretion here. *See Ulibarri*, 178 Ariz. at 162-63, 871 P.2d at 709-10.

¶9 Anteneta does not dispute that she had adequate notice that her personal presence was required and that termination proceedings could occur in her absence. Nor does she argue the juvenile court erred in finding that she had adequate time to reach the

bus station and simply had failed to do so. *See Bob H. v. Ariz. Dep't of Econ. Sec.*, 225 Ariz. 279, ¶ 13, 237 P.3d 632, 635 (App. 2010) (failure to obtain transportation does not establish good cause). And she cites no authority suggesting her previous diligence in participating in her case excuses her failure to appear when required. Moreover, nothing in the record indicates Anteneta promptly informed her attorney or the court that she would be absent. In short, even if another court might have ruled differently, we cannot say the juvenile court abused its discretion in concluding Anteneta had not established good cause for her failure to appear.<sup>1</sup>

¶10 To the extent Anteneta asserts the juvenile court should have continued the matter, we first observe that she did not request a continuance. Additionally, Anteneta cites no authority suggesting the court was required to continue the hearing sua sponte, and she does not otherwise develop this argument on appeal. Accordingly, she has waived the argument, and we do not address it further. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 88, 181 P.3d 219, 242 (App. 2008) (appellate court will not address issues or arguments waived by party's failure to develop them adequately); *see also* Ariz. R. Civ. App. P. 13(a)(6) (argument "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (Rule 13, Ariz. R. Civ. App. P., applies to juvenile appeals).

¶11 Anteneta next argues the juvenile court abused its discretion in determining she had waived her rights and admitted the grounds alleged in ADES's petition. Again,

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<sup>1</sup>Because it was raised for the first time in her reply brief, we do not address Anteneta's argument that Rule 66(D) "should be reserved to instances where a parent has ignored the court, not when a parent has apparently mismanaged her time."

the bases for this argument are not entirely clear from Anteneta's brief. Given her failure to personally appear, Anteneta was deemed to have admitted the facts asserted in ADES's petition. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 28, 181 P.3d 1126, 1134 (App. 2008). Anteneta does not assert those facts were insufficient to support the court's determination that she had abandoned Elijah. A court has broad discretion whether to permit a party to appear telephonically, and Anteneta has not persuaded us that the court abused its discretion here. *See Ariz. R. P. Juv. Ct. 42; Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 14, 119 P.3d 1034, 1037 (App. 2005); *State v. Moore*, 203 Ariz. 515, ¶ 11, 56 P.3d 1099, 1102 (App. 2002) (noting telephonic testimony does not permit factfinder to evaluate witness demeanor, expressions, and body language).

¶12 Insofar as Anteneta asserts the juvenile court's determination violated her due process rights, that claim is meritless. In its under-advisement ruling, the court stated its decision was based on "[c]areful consideration . . . given to all of the evidence, including the testimony of witnesses, their credibility and demeanor while testifying, the legal file, the exhibits and the arguments of counsel." *See Ariz. R. P. Juv. Ct. 66(D)*(authorizing termination based on record and evidence presented if petitioner has proven grounds to terminate parental rights). Anteneta does not assert that evidence was insufficient to support the court's ruling or that the petition was somehow defective. That Anteneta was precluded from presenting her own evidence to contradict the factual assertions in the petition, which she was deemed to have admitted, and the evidence presented, does not violate due process. Due process requires that Anteneta had been given notice and the opportunity to be heard. *See Willie G.*, 211 Ariz. 231, ¶ 18, 119 P.3d

at 1038. Anteneta plainly had adequate notice both of the date and time of the hearing and the consequences of failing to appear and, again, the court was not required to permit her to participate telephonically. *See id.* (finding no due process violation when absent parents not permitted to appear telephonically).

¶13 For the foregoing reasons, we affirm the juvenile court’s order terminating Anteneta’s parental rights to Elijah.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge